

Public Service Commission DOCKET FILE COPY ORIGINAL
Of West Virginia

201 Brooks Street, P.O. Box 812
Charleston, West Virginia 25323

Charlotte R. Lane
Chairman

December 12, 1997

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Office of the Secretary
CC Docket No. 96-45
Federal Communications Commission
Room 222, 1919 M Street, NW
Washington, DC 20554

**Re: West Virginia Intrastate Discount Matrix for Schools and
Libraries**

Dear Sir or Madam:

In response to the Federal Communications Commission's Public Notice DA 97-1892 (Rel. Sept. 29, 1997), the Public Service Commission of West Virginia (Commission) hereby provides notice that it has promulgated rules adopting an intrastate discount matrix for schools and libraries with entries at least equal to those of the interstate discount matrix adopted by the FCC in its "Report and Order," In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-157 (Rel. May 8, 1997).

A copy of the Commission's Rules and Regulations For Telecommunications Services, 150 C.S.R. Series 24, is attached hereto. The intrastate discount rules for schools and libraries became effective June 23, 1997.

Thank you for your kind attention to this matter.

Sincerely,



Charlotte R. Lane
Chairman

Enclosure
CRL/pja

304-340-0306
304-340-3758 fax
CLANE@GWMAIL.STATE.WV.US

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**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA
in the City of Charleston on the 12th day of June, 1997.

GENERAL ORDER 187.13

IN THE MATTER OF

**Emergency Rules and Regulations Establishing
Discount Rates for Intrastate Telecommunications
Services for Eligible Schools and Libraries
in Accordance with the Telecommunications Act
of 1996.**

COMMISSION ORDER PROMULGATING EMERGENCY RULES

By Order entered January 31, 1997, the Commission initiated a general investigation for the purpose of receiving information and comments from interested persons regarding matters related to the creation of a Universal Service Fund (USF) within the State of West Virginia, consistent the requirements of both the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 to be codified at 47 U.S.C. §§151 et seq. (the Act), as well as West Virginia law. See Case Nos. 97-0103-T-GI and 96-0994-T-PC (Order, Jan. 31, 1997). The Commission bifurcated its general investigation proceedings. The initial phase of the proceedings would focus on the need for and mechanism to establish an interim USF. If the Commission determined it necessary, it would then promulgate emergency rules establishing an interim USF. Assuming a USF is deemed necessary, the second phase would focus on the creation of a final State USF. The Commission established a February 21, 1997 deadline for parties to file initial comments and a February 28, 1997 deadline for parties to file reply comments regarding the initial phase of the investigation proceeding. Numerous parties filed comments in accordance with the Commission-established deadlines.

On May 8, 1997, the Federal Communication Commission (FCC) issued its "Report and Order," in In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-157 (released May 8, 1997)(FCC US Order). Section X of the FCC US Order addressed the Act's inclusion of schools and libraries among the explicit beneficiaries of universal service support. See FCC US Order, ¶¶424-607. This portion of the order addressed. The FCC noted that the Act's legislative history indicated that Congress intended to ensure that eligible schools and libraries have affordable access to modern telecommunications and information services that will enable them to provide educational services to all parts of the nation. FCC US Order, ¶424.

On May 16, 1997, the Consumer Advocate Division of the Public Service Commission (CAD) filed a petition requesting the Commission to adopt emergency rules establishing a program of discounts for eligible schools and libraries covering intrastate services at least equal to the discounts for interstate services established in the FCC US Order. Appended to CAD's petition were proposed emergency rules establishing discounts for intrastate services to eligible schools and libraries. On May 23, 1997, the West Virginia Department of Education filed a petition requesting the Commission to adopt those emergency rules appended to CAD's May 16, 1997 petition. On May 30, 1997, the Independent Group, which represents a number of independent rural telephone companies in West Virginia,¹ filed a letter supporting CAD's petition to ensure that West Virginia's schools have access to the universal service funding established in the FCC order. The West Virginia Library Commission and Citizens Communications² likewise filed comments urging the expeditious adoption of emergency rules adopting discounts for intrastate telecommunications service on May 30, and June 3, 1997, respectively.

DISCUSSION

Having reviewed the provisions of the FCC US Order, as well as the arguments of both CAD and the West Virginia Department of Education, the Commission concludes that emergency rules establishing discounts for intrastate services for eligible schools and libraries within the State of West Virginia should be promulgated. The Commission will adopt, with certain modifications, those rules proposed by CAD.³

As an initial matter, the Commission takes notice of the fact

¹The Independent Group represents Armstrong Telephone Company - Northern Division, Armstrong Telephone company - West Virginia, Hardy Telecommunications, Inc., Spruce Knob-Seneca Rocks Telephone, Inc., War Telephone Company, and West Side Telephone Company.

²Citizens Communications consists of the following companies: Citizens Telecommunications Company of West Virginia, Citizens Mountain State Telephone Company, and Citizens Telecommunications Company.

³CAD included two sections in its proposed rules which the Commission is not inclined to adopt at this time, namely rules setting forth general principles underlying the concept of universal service and rules relating to the establishment of a universal service fund. These provisions are not needed to establish a discount program for intrastate services for eligible schools and libraries.

that West Virginia is a rural state with limited local resources for increased educational system budgets. Moreover, State government and the private sector are making efforts to make use of advanced technologies, including telecommunications and similar services, to provide a better education to the State's students and better access to libraries for the State's citizens.

The FCC established a fund, capped at \$2.25 billion annually, to provide discounts ranging from 20% to 90% of pre-discount prices for interstate services, based on the number of disadvantaged students at each school or library and whether the school or library is located in a rural or urban area. See 47 C.F.R. §§54.500-54.517. In addition, the FCC concluded that it should also provide federal universal service support to fund intrastate discounts. FCC US Order, ¶550. However, the FCC required states to ". . . establish intrastate discounts at least equal to the discounts on interstate services as a condition of federal universal support for schools and libraries in that state." Id. Thus, in order for eligible schools and libraries in West Virginia to avail themselves of discounted services, funded out of the \$2.25 billion federal fund, the Commission must first adopt a program of discounts for schools and libraries covering intrastate services that is at least generous as the federal discount program. If the Commission establishes such a discount program, the entire program of discounts for West Virginia schools and libraries, for both interstate and intrastate services, will be paid from the federal universal fund. If the Commission fails to adopt such a discount program for intrastate telecommunications services, schools and libraries in West Virginia will not have access to the federal fund. See 47 C.F.R. §54.506(e)(1).

Not only must the Commission establish a discount program for intrastate services for eligible schools and libraries in order to receive federal funding, such a program must also be established quickly. Prompt action by the Commission is necessitated by the FCC's decision to make discounts available for the 1997-1998 school year on a first-come, first-served basis. Moreover, eligible schools and libraries may begin applying for such discounts as early as July 1, 1997, for funding to begin January 1, 1998. See FCC Order, ¶607; 47 C.F.R. §54.507(c)&(d). Commission failure to adopt an intrastate discount program quickly could delay or prohibit West Virginia from participating in at least the first year of the federal universal service support program for schools and libraries. Moreover, the West Virginia Department of Education has indicated that it intends to aggressively pursue federal funding for discounted telecommunication services by July 1, 1997.

In view of the foregoing, the Commission believes that emergency rules establishing a discount program equivalent to the FCC program for interstate telecommunications services should be promulgated, to become effective as soon as possible, in order to allow eligible schools and libraries within the State of West

Virginia to begin applying for both interstate and intrastate discounted services to the FCC on July 1, 1997, or as soon thereafter as possible. A copy of the Commission's emergency rules is appended hereto.

FINDINGS OF FACT

1. On May 8, 1997, the Federal Communication Commission (FCC) issued its "Report and Order," in In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-157 (released May 8, 1997)(FCC US Order).

2. As part of its May 8, 1997 order, the FCC established a fund, capped at \$2.25 billion annually, to provide discounts ranging from 20% to 90% of pre-discount prices for interstate services, based on the number of disadvantaged students at each school or library and whether the school or library is located in a rural or urban area. See 47 C.F.R. §§54.500-54.517. In addition, the FCC concluded that it should also provide federal universal service support to fund intrastate discounts, provided states establish a program of intrastate discounts at least equal to the discounts on interstate services. FCC US Order, ¶550.

3. In order for eligible schools and libraries in West Virginia to fully avail themselves of discounted services, funded out of the \$2.25 billion federal fund, the Commission must first adopt a program of discounts for schools and libraries covering intrastate services that is at least generous as the federal discount program.

4. If the Commission fails to adopt such a discount program for intrastate telecommunications services, schools and libraries in West Virginia will not have access to the federal fund. See 47 C.F.R. §54.506(e)(1).

5. The FCC-established discounts are available beginning with the 1997-1998 school year on a first-come, first-served basis and eligible schools and libraries may begin applying for such discounts as early as July 1, 1997, for funding to begin January 1, 1998. See FCC Order, ¶607; 47 C.F.R. §54.507(c)&(d).

6. Commission failure to adopt an intrastate discount program quickly could delay or prohibit West Virginia from participating in at least the first year of the federal universal service support program for schools and libraries.

7. On May 16, 1997, the Consumer Advocate Division of the Public Service Commission (CAD) filed a petition requesting the Commission to adopt emergency rules establishing a program of discounts for eligible schools and libraries covering intrastate services at least equal to the discounts for interstate services established in the FCC US Order.

8. On May 23 and May 30, 1997, the West Virginia Department of Education and the Independent Group, respectively, filed petitions supporting CAD's petition.

CONCLUSIONS OF LAW

1. A discount program for intrastate services for eligible schools and libraries at least equal to the federal discount program established in the FCC's May 8, 1997 order should be established in order to assure eligibility for federal funding of both interstate and intrastate services.

2. Such a program must also be established quickly in order to allow West Virginia schools and libraries to begin applying, by July 1, 1997, for federal universal service support for the 1997-1998 calendar year.

3. It is necessary to promulgate emergency rules to establish a discount program for intrastate services for eligible schools and libraries in order to allow such schools and libraries to begin applying for federal universal service support by July 1, 1997.


ORDER

IT IS, THEREFORE, ORDERED that the emergency rules attached hereto as Appendix A should be filed with the Secretary of State, in accordance with W. Va. Code §29A-3-15.

IT IS FURTHER ORDERED that, on or before July 15, 1997, any interested person may file written comments by mailing such comments to the Public Service Commission, Executive Secretary, 201 Brooks Street, P. O. Box 812, Charleston, West Virginia 25323.

IT IS FURTHER ORDERED that, in accordance with W. Va. Code §29A-3-15, a public hearing on the emergency rules attached hereto should be held on July 15, 1997, at 9:30 A.M. in the Howard M. Cunningham Hearing Room, and notice thereof published by the Commission's Executive Secretary, as soon as practicable upon entry hereof, in both the State Register and by publishing a copy of the notice attached hereto once, in a newspaper duly qualified by the Secretary of State, published and of general circulation in each of the following cities: Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Huntington, Keyser, Lewisburg, Logan, Martinsburg, Morgantown, Moundsville, New Cumberland, Parkersburg, Point Pleasant, Welch, Wheeling and Williamson, and to file proof of publication thereof immediately thereafter.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this Order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.



OTIS D. CASTO, COMMISSIONER



RICHARD D. FRUM, COMMISSIONER



CHARLOTTE R. LANE, CHAIRMAN

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

GENERAL ORDER NO. 187.13

IN THE MATTER OF

Emergency Rules and Regulations Establishing
Discount Rates for Intrastate Telecommunications
Services for Eligible Schools and Libraries
in Accordance with the Telecommunications Act
of 1996.

PUBLIC NOTICE

By Order entered June 12, 1997, the public Service Commission of West Virginia (Commission) promulgated emergency rules and regulations establishing discount rates for intrastate telecommunications services for eligible schools and libraries in accordance with the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat.56, to be codified at 47 U.S.C. §§151 et seq., as well as West Virginia law. In its June 12, 1997 Order, the Commission scheduled a public hearing to be held on July 15, 1997, in the Howard M. Cunningham Hearing Room, 201 Brooks Street, Charleston, West Virginia 25323, at 9:30 a.m. Interested persons may file written comments on or before July 15, 1997, by mailing such comments to: Public Service Commission, Executive Secretary, P. O. Box 812, Charleston, WV 25323.

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NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

Charlotte K. Lu

150 C.S.R. 24

TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

SERIES 24
RULES AND REGULATIONS FOR
DISCOUNTED TELECOMMUNICATIONS SERVICES

\$150-24-1. General.

1.1. Scope -- These rules govern the procedure for receiving discounted intrastate telecommunications services for eligible schools and libraries as initially established by the Federal Communications Commission (FCC) in its May 8, 1997 "Report and Order," in In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-157 (Released, May 8, 1997).

1.2. Authority -- West Virginia Code §§24-1-1, 24-1-7, 24-2-1, 24-2-2.

1.3. Filing Date -- June 13, 1997

1.4. Effective Date -- June 23, 1997

1.5. Definitions -- In the interpretation and application of these rules, the Commission adopts and incorporates, as if fully set forth herein, the definitions set forth in 47 C.F.R. §§54.5 and 54.500, attached as Appendix I to the Federal Communications Commission's "Report and Order," in In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, FCC 97-157 (Released, May 8, 1997).

\$150-24-2. Eligibility.

Eligibility of schools and libraries for a discount on intrastate telecommunications services shall be determined in accordance with 47 CFR §54.501.

\$150-24-3. Discount Mechanism.

Discounts on intrastate telecommunications services for eligible schools and libraries shall be set as a percentage discount from the pre-discount price.

3.1. Discount Percentages --

The discounts available to eligible schools and libraries for intrastate telecommunications services shall range from twenty percent (20%) to ninety percent (90%) of the pre-discount price for all eligible intrastate services provided by eligible providers, as defined in 47 CFR Part 54, Subpart F. The discounts available to a particular school, library, or consortium of only such entities

shall be determined by indicators of poverty to high cost.

3.1.1. For schools and school districts, the level of poverty shall be measured by the percentage of their student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism. Counties or the State, applying for eligible services on behalf of their individual schools, may calculate the county-wide percentage of eligible students using a weighted average. For example, a county would divide the total number of students in the county eligible for the national school lunch program by the total number of students in the county to compute the county-wide percentage of eligible students. Alternatively, the county could apply on behalf of individual schools and use the respective percentage discounts for which the individual schools are eligible.

3.1.2. For libraries and library consortia, the level of poverty shall be based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved mechanism in the public school district or county in which they are located. If the library is not in a school district then its level of poverty shall be based on an average of the percentage of students eligible for the national school lunch program in each of the school districts that children living in the library's location attend. Library systems applying for discounted services or facilities on behalf of their individual branches shall calculate the system-wide percentage of eligible families using, an unweighted average based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program in the public school district in which they are located for each of their branches or facilities.

3.2. Classification of Schools and Libraries --

Schools and libraries shall be classified as "urban" or "rural" based on location in an urban or rural area, according to the following designations.

3.2.1. Schools and libraries located in metropolitan counties, as measured by the federal Office of Management and Budget's Metropolitan Statistical Area method, shall be designated as urban, except for those schools and libraries located within metropolitan counties identified by census block or tract in the Goldsmith Modification.

3.2.2. Schools and libraries located in non-metropolitan counties, as measured by the Office of Management and Budget's Metropolitan Statistical Area method, shall be designated as rural. Schools and libraries located in rural areas within metropolitan counties identified by census block or tract in the

Goldsmith Modification shall also be designated as rural.

\$150-24-4. Matrix.

The matrix attached as "Table A" shall be used to set a discount rate to be applied to eligible intrastate services and facilities purchased by eligible schools, school districts, libraries, or library consortia based on the institution's level of poverty and location in an "urban" or "rural" area.

\$150-24-5. Consortia.

Consortia applying for discounted services or facilities on behalf of their members shall calculate the portion of the total bill eligible for a discount using a weighted average based on the share of the pre-discount price for which each eligible school or library agrees to be financially liable. Each eligible school, county, library or library consortia will be credited with the discount to which it is entitled.

\$150-24-6. Application for Funding.

Application for discounts on intrastate telecommunications services provided to schools and libraries under this section shall be made in accordance with 47 C.F.R. Part 54, Subpart F.

\$150-24-7. Funding of Discounts.

Funding for discounts on intrastate telecommunications services provided to schools and libraries under this section shall be provided from the federal universal service fund in accordance with 47 CFR Part 54, Subpart F.

TABLE A, 150 CSR 24

SCHOOLS & LIBRARIES DISCOUNT MATRIX		DISCOUNT LEVEL	
HOW DISADVANTAGED?		urban discount	rural discount
% of students eligible for national school lunch program			
<1		20	25
1-19		40	50
20-34		50	60
35-49		60	70
50-74		80	80
75-100		90	90

SUMMARY OF THE RULE

The proposed emergency rules, a new Series 24, establish a procedure whereby schools and libraries can receive discounted intrastate telecommunications services.

The Federal Communication Commission (FCC) has established a fund, capped at 2.25 billion dollars annually, to provide discounts ranging from 20% to 90% of pre-discount prices for interstate services, based on the number of disadvantaged students at each school or library, and whether the school or library is located in a rural or urban area. In addition, the FCC concluded that it should also provide federal universal service support to fund intrastate discounts. However, in order for schools and libraries in West Virginia to receive discounts for intrastate telecommunications services, the State must have in place a procedure for such a discount program which is at least equal to the discounts on interstate services established by the FCC.

The proposed rules establish such a discount program for intrastate telecommunications services.

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #7

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Filing Date

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: PUBLIC SERVICE COMMISSION TITLE NUMBER: 150

CITE AUTHORITY: Code §§24-1-1, 24-1-7, 24-2-1, 24-2-2

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 24

TITLE OF RULE BEING FILED AS AN EMERGENCY: "Rules and Regulations for
Discounted Telecommunications Services"

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME
EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY
AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE
AS FOLLOWS:

SEE ATTACHED STATEMENT

Use additional sheets if necessary


Signature

**SPECIFIC STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE TO BE
FILED AS AN EMERGENCY**

As stated in the summary of the rule, the proposed rule creates a program whereby schools and libraries in West Virginia can receive discounts of intrastate telecommunications services. The discounts will be funded from a federal fund capped at 2.25 billion dollars annually, and will be on a first-come, first-served basis. Eligible schools and libraries may begin applying for such discounts, on a first-come, first-served basis, as early as July 1, 1997 for funding to begin January 1, 1998. Thus, it is vitally important for the Commission to have in place emergency rules establishing its program prior to July 1, 1997. Otherwise, schools and libraries in West Virginia may find that their applications for federal funding are too late and will not be eligible for discounts for intrastate telecommunications services.

The federal program and funding was established by the Federal Communications Commission in In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-157 (released May 8, 1997).

150 CSR 24 Public Service Commission Legislative Rule Series 24

FISCAL NOTE

This is a fiscal note issued pursuant to the authority of West Virginia Code §§24-1-1, 24-1-7, 24-2-1, and 24-2-2.

I. Objectives of the Rule

The objective of this Rule is to establish a new series dealing with discounted telecommunications services.

II. Cost of implementing the proposed Rule

There will be no significant implementation costs relating to the establishment of these emergency rules for the State of West Virginia. It can not be determined at this point the cost of implementation on the persons affected by the rules.

III. The effect this measure will have on cost or revenues of State Government.

This rulemaking should have a positive affect on the expenses or revenues of state government in that telecommunications services provided to state funded schools and libraries will be at a lower cost as a result of the discounts.

IV. Economic impact of the Rule on the State or its residents.

Other than the general belief that schools and libraries will receive lower rates for telecommunications services, a quantifiable economic impact on the State and its residents is difficult to predict at this time.

Date: 6-12-97

Agency: West Virginia Public Service Commission

Signature of authorized representative:

Charlotte R. Lane
Charlotte R. Lane, Chairman